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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 000976

SIPDIS

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TAGS: [EAID](#) [EINV](#) [PREL](#) [ETRD](#) [PGOV](#) [IZ](#)
SUBJECT: THREE KEY US-IRAQ AGREEMENTS STILL UNRATIFIED

REF: A. BAGHDAD 791
[1](#)B. BAGHDAD 585

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Classified By: EMIN Marc Wall for reason 1.4 (b,d).

[1](#)1. (C) SUMMARY: The GOI and the USG signed a Trade and Investment Framework Agreement (TIFA), an OPIC Investor Incentive Agreement (IIA), and a Bilateral Assistance Agreement (BAA) in 2005, but all three remain unratified. These agreements would bolster US efforts to expand trade and investment and to provide development assistance to Iraq. In recent weeks, the lack of a ratified BAA has become problematic, as Customs officials have impounded and demanded that customs duties be paid on some equipment and materials destined for US assistance programs. It will be politically difficult to secure parliamentary ratification of the BAA with elections looming this year. Moreover, the Council of Representatives (COR) has no appetite for tackling another set of agreements with the US after the major legislative battles that accompanied ratification of the Strategic Framework Agreement (SFA) and the US-Iraq Security Agreement (SA) last year. However, the agreements cannot become legally binding without COR ratification. Addressing the issue on two tracks, the Embassy is working with influential COR members to find a legislative solution, while at the same time requesting that the Ministry of Finance issue a temporary order exempting USAID, ITAO and other USG agencies' equipment from import duties. END SUMMARY.

Background on the Unratified Agreements

[1](#)2. (U) The USG and the GOI signed the TIFA, IIA and BAA in [1](#)2005. The TIFA would provide a framework for bilateral trade and investment discussions and could, at a later date, offer a forum for negotiating a Bilateral Investment Treaty (BIT). The IIA would facilitate OPIC financing and insurance for badly-needed US investment in Iraq. The BAA ensures tax and fee-exempt status for US assistance personnel and equipment as well as privileges and immunities for USG assistance personnel. Although the COR's Economic committee issued a report in 2007 recommending approval of all three, the COR has not done so. In the absence of ratified agreements, the USG has found creative ways to advance our bilateral agenda with the GOI. For examples, trade and investment discussions take place under the Dialogue on Economic Cooperation (DEC) mechanism and, now, the SFA Joint Coordinating Committees; and OPIC has managed to ensure or finance several US investments by issuing waivers of IIA requirements.

The Bilateral Assistance Agreement Becomes Urgent

[1](#)3. (SBU) While these creative solutions have worked until recently, the lack of a BAA suddenly became problematic on January 1. Until that date, Coalition Provisional Authority

(CPA) Order No. 17 (revised) provided tax and fee-exempt status for assistance personnel and equipment imported by the USG for its assistance projects (as well as immunities for USG personnel), and the GOI had (with some exceptions) honored those provisions. However, with the normalization of bilateral relations under the SF and the SFA, the CoR suspended CPA Order 17 effective January 1. As a result, GOI officials have already impounded USAID vehicles and sought to apply tariffs to equipment for ITAO-funded projects -- most notably a USD 150,000 demand for duties on pipes needed to repair a US-funded drinking water project in Sadr City. It is anticipated that issues involving customs duties, taxes (including corporate and expatriate income taxes), and other GOI imposed fees will increase in number and severity in the absence of a BAA.

¶4. (SBU) Ultimately, the BAA - or a replacement agreement on the same topic - is required by the Foreign Assistance Act. Until such an agreement is in place, the USG is limited in the sources of funds that can be used for Iraqi assistance.

Politically Sensitive

¶5. (C) The COR is on recess until April 15, but we have nevertheless engaged a range of senior GOI officials and COR representatives to press for ratification of all three agreements, noting the particular urgency of the BAA. Unfortunately, all our contacts have warned us that, with elections approaching this year, now is not the time to be seeking COR ratification for any "US initiative." The major political battles that accompanied ratification of the SA and the SFA in late 2008 left even our most helpful COR contacts exhausted, Economic Committee Chairman Haidar

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Al-Ibadi told EMIN. An ally of Prime Minister Nouri al-Maliki and Dawa Party member, Al-Ibadi fully supports the agreements -- it was his committee that authored the 2007 report recommending ratification -- but he was not optimistic. "This is in our interest, but it would take a huge campaign" that the COR simply will not entertain at this time, he said. Sami Al-Askari, another Dawa member of the Foreign Affairs Committee, put in even more blunt political terms. "We are in an election year. If anything comes from the government -- especially anything they think the Americans want -- they will put obstacles," he said, referring specifically to non-Dawa COR members who have allied to block several recent GOI initiatives. (COMMENT: That a growing coalition in the COR is eager to thwart Maliki initiatives this election year was made abundantly clear during the 2009 budget negotiations (Reftel B). END COMMENT) Like many other GOI officials and COR members, Al-Ibadi and Al-Askari urged us to "find a way" to bring the BAA into force without COR action, suggesting hopefully that perhaps the agreements - in particular the BAA - could enter into force as implementing arrangements under the SFA. Unfortunately, the PM's own legal advisor Dr. Fadil Kadhum, rejected this option, and GOI and USG attorneys agree that COR action is the only clear way to ensure that the agreements are binding.

Solutions: Two Tracks

¶6. (C) We will continue to press for COR ratification of the BAA, the TIFA and the IIA. EMIN, ECON and L have engaged in a range of contacts with GOI officials and COR leaders from several parties, and will continue to do so. However, we also recognize the urgent need to ensure that US bilateral assistance and equipment remain tax and duty exempt, and we are exploring other short-term solutions:

-- The Embassy proposes asking the Minister of Finance to issue a ministerial order directing offices within the MoF not to apply taxes, customs, import duties or other fees on USG-funded assistance. A ministerial order of this type would not be binding as a matter of international law and could be changed at any time (or by a subsequent minister), but it could free up the US equipment that has already been impounded and could provide temporary relief over the short- to medium-term.

-- Homam Hamoud, the influential Chairman of the Foreign Affairs Committee, has committed to having COR lawyers examine whether they concur with the opinion of the PM's legal advisor regarding whether the SFA provides an avenue for bringing the BAA into force without COR participation. The Prime Minister's Chief of Staff has also suggested that the will examine this possibility. If Iraqi actors succeed in finding a legal basis for concluding the BAA under the SFA we will pursue it after consulting with L and NEA.

-- Hamoud has also suggested the possibility of introducing legislation that would exempt all foreign aid from taxes and duties -- a step that could at least remove the threat of such charges being imposed on USG assistance. By not naming the US directly, this route could reduce negative reaction within the COR. However, it is unlikely that domestic Iraqi legislation would satisfy the Foreign Assistance Act's requirement of an assistance agreement. Existing restrictions on funds used for Iraqi assistance would therefore remain until a bilateral agreement came into force.

Near-Term Ratification Unlikely

17. (SBU) COMMENT: Although we will keep pressing, it is unlikely that the COR will ratify the BAA, TIFA or IIA before national elections late this year. However, we are fairly confident that we and the GOI will find a stopgap solution that exempts US assistance from duties and permits our development and other projects to continue. END COMMENT.

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